

Calendar No. 401

108TH CONGRESS
1ST SESSION

S. 551

[Report No. 108–201]

To provide for the implementation of air quality programs developed in accordance with an Intergovernmental Agreement between the Southern Ute Indian Tribe and the State of Colorado concerning Air Quality Control on the Southern Ute Indian Reservation, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 6, 2003

Mr. CAMPBELL introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

NOVEMBER 19, 2003

Reported by Mr. INHOFE, with an amendment

[Omit the part struck through and insert the part printed in *italic*]

A BILL

To provide for the implementation of air quality programs developed in accordance with an Intergovernmental Agreement between the Southern Ute Indian Tribe and the State of Colorado concerning Air Quality Control on the Southern Ute Indian Reservation, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Southern Ute and Col-
3 orado Intergovernmental Agreement Implementation Act
4 of 2003”.

5 **SEC. 2. FINDINGS AND PURPOSE.**

6 (a) FINDINGS.—Congress, after review and in rec-
7 ognition of the purposes and uniqueness of the Intergov-
8 ernmental Agreement between the Southern Ute Indian
9 Tribe and the State of Colorado, finds that—

10 (1) the Intergovernmental Agreement is con-
11 sistent with the special legal relationship between
12 Federal Government and the Tribe; and

13 (2) air quality programs developed in accord-
14 ance with the Intergovernmental Agreement and
15 submitted by the Tribe for approval by the Adminis-
16 trator may be implemented in a manner that is con-
17 sistent with the Clean Air Act (42 U.S.C. 7401 et
18 seq.).

19 (b) PURPOSE.—The purpose of this Act is to provide
20 for the implementation and enforcement of air quality con-
21 trol programs under the Clean Air Act (42 U.S.C. 7401
22 et seq.) and other air quality programs developed in ac-
23 cordance with the Intergovernmental Agreement that pro-
24 vide for—

25 (1) the regulation of air quality within the exte-
26 rior boundaries of the Reservation; and

1 (2) the establishment of a Southern Ute Indian
2 Tribe/State of Colorado Environmental Commission.

3 **SEC. 3. DEFINITIONS.**

4 In this Act:

5 (1) ADMINISTRATOR.—The term “Adminis-
6 trator” means the Administrator of the Environ-
7 mental Protection Agency.

8 (2) COMMISSION.—The term “Commission”
9 means the Southern Ute Indian Tribe/State of Colo-
10 rado Environmental Commission established by the
11 State and the Tribe in accordance with the Intergov-
12 ernmental Agreement.

13 (3) INTERGOVERNMENTAL AGREEMENT.—The
14 term “Intergovernmental Agreement” means the
15 agreement entered into by the Tribe and the State
16 on December 13, 1999.

17 (4) RESERVATION.—The term “Reservation”
18 means the Southern Ute Indian Reservation.

19 (5) STATE.—The term “State” means the State
20 of Colorado.

21 (6) TRIBE.—The term “Tribe” means the
22 Southern Ute Indian Tribe.

23 **SEC. 4. TRIBAL AUTHORITY.**

24 (a) AIR PROGRAM APPLICATIONS.—

1 (1) IN GENERAL.—The Administrator is au-
 2 thorized to treat the Tribe as a State for the pur-
 3 pose of any air program applications submitted to
 4 the Administrator by the Tribe under section 301(d)
 5 of the Clean Air Act (42 U.S.C. 7601(d)) to carry
 6 out, in a manner consistent with the Clean Air Act
 7 (42 U.S.C. 7401 et seq.), the Intergovernmental
 8 Agreement.

9 (2) APPLICABILITY.—If the Administrator ap-
 10 proves an air program application of the Tribe, the
 11 approved program shall be applicable to all air re-
 12 sources within the exterior boundaries of the Res-
 13 ervation.

14 (b) TERMINATION.—If the Tribe or the State termi-
 15 nates the Intergovernmental Agreement, the Adminis-
 16 trator shall promptly take appropriate administrative ac-
 17 tion to withdraw treatment of the Tribe as a State for
 18 the purpose described in subsection (a)(1).

19 **SEC. 5. CIVIL ENFORCEMENT.**

20 If any person fails to comply with a final civil order
 21 of the Tribe or the Commission made in accordance with
 22 a program under the Clean Air Act (42 U.S.C. 7401 et
 23 seq.) or any other air quality program established under
 24 the Intergovernmental Agreement, the Tribe or the Com-
 25 mission, as appropriate, may bring a civil action for de-

1 claratory or injunctive relief, or for other orders in aid
 2 of enforcement, in the United States District Court for
 3 the District of Colorado.

4 **SEC. 5. CIVIL ENFORCEMENT.**

5 (a) *IN GENERAL.*—If any person fails to comply with
 6 a final civil order of the Tribe or the Commission made
 7 in accordance with the Clean Air Act (42 U.S.C. 7401 et
 8 seq.) or any other air quality program established under
 9 the Intergovernmental Agreement, the Tribe or the Commis-
 10 sion, as appropriate, may bring a civil action for declara-
 11 tory or injunctive relief, or for other orders in aid of en-
 12 forcement, in the United States District Court for the Dis-
 13 trict of Colorado.

14 (b) *NO EFFECT ON RIGHTS OR AUTHORITY.*—Nothing
 15 in this Act alters, amends, or modifies any right or author-
 16 ity of any person (as defined in section 302(e) of the Clean
 17 Air Act (42 U.S.C. 7601(e)) to bring a civil action under
 18 section 304 of the Clean Air Act (42 U.S.C. 7603).

19 **SEC. 6. JUDICIAL REVIEW.**

20 Any decision by the Commission that would be sub-
 21 ject to appellate review if it were made by the Adminis-
 22 trator—

23 (1) shall be subject to appellate review by the
 24 United States Court of Appeals for the Tenth Cir-
 25 cuit; and

1 (2) may be reviewed by the Court of Appeals
2 applying the same standard that would be applicable
3 to a decision of the Administrator.

4 **SEC. 7. DISCLAIMER.**

5 Nothing in this Act—

6 (1) modifies any provision of—

7 (A) the Clean Air Act (42 U.S.C. 7401 et
8 seq.);

9 (B) Public Law 98–290 (25 U.S.C. 668
10 note); or

11 (C) any lawful administrative rule promul-
12 gated in accordance with those statutes; or

13 (2) affects or influences in any manner any
14 past or prospective judicial interpretation or applica-
15 tion of those statutes by the United States, the
16 Tribe, the State, or any Federal, tribal, or State
17 court.

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